

EXHIBIT C1

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

ORIGINAL

DEC 29 2005

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk
By *JW* Deputy Clerk

RICHARD A. ADAMS,

)

Plaintiff,

)

v.

)

IBM CORP.

)

Defendant.

)

CIVIL ACTION FILE NO.

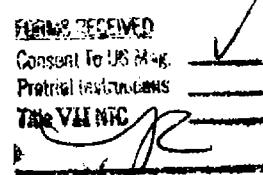
1:05-cv-3308

TWT

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendant IBM Corp. ("Defendant") hereby removes civil action case number 05 M023279 from the Magistrate Court of DeKalb County, State of Georgia on the following grounds:

1. On or about December 2, 2005, Plaintiff commenced a civil action against Defendant in the Magistrate Court of DeKalb County, State of Georgia. The Clerk of the Magistrate Court of DeKalb County issued a summons in connection with the Magistrate Court action and served said action on or about December 5, 2005. A copy of the Complaint and Summons is attached hereto as Exhibit "A".



2. No proceedings have been had in the Magistrate Court action.

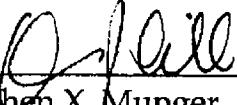
Defendant has not answered or served any responsive pleadings to the complaint, or made any appearance or argument in the Magistrate Court of DeKalb County, State of Georgia.

3. In the Complaint, Plaintiff alleges various claims arising out of a welfare benefit program. Accordingly, these claims are preempted by the Employment Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461. This Court, therefore, has original jurisdiction over this case pursuant to 28 U.S.C. § 1331, because plaintiff's claims raise issues of federal law.

4. Defendant concurrently is giving notice of this filing to the clerk of the Magistrate Court of DeKalb County, Georgia. A copy of the Notice of Filing Notice of Removal is attached hereto as Exhibit "B".

WHEREFORE, Defendant files this Notice of Removal from the Magistrate Court of DeKalb County, State of Georgia, in which the case is now pending, to the United States District Court for the Northern District of Georgia, Atlanta Division.

Respectfully submitted this 29th day of December, 2005.

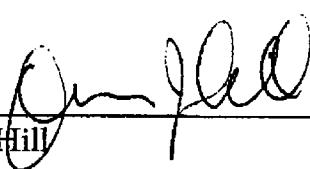
By: 

Stephen X. Munger
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Owen T. Hill
Georgia Bar No. 354393
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Facsimile: (404) 525-1173

ATTORNEYS FOR DEFENDANT
IBM CORP.

CERTIFICATION

I, Owen Hill, do hereby certify that this document has been prepared in Book Antiqua font, 13 point, in compliance with LR 5.1B of this Court.



Owen T. Hill

EXHIBIT C2

0511K010630

**MAGISTRATE COURT OF DEKALB COUNTY
DEKALB COUNTY COURTHOUSE**

PLAINTIFF: Richard A. Adams

DEFENDANT: IBM Corp

Case No: 3401CV010630

Date Filed: 12/5/05

Cost: \$17.50

Suiting: **Second**

Court: **Small**

Count: **1**

Plaintiff: **Richard A. Adams**

Defendant: **IBM Corp**

Address: **3036**

Phone: **3036**

Fax: **3036**

Email: **3036**

EXHIBIT C3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RICHARD A. ADAMS,)
)
Plaintiff,)
)
v.) CIVIL ACTION FILE NO.
)
IBM CORP.)
)
Defendant.)

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

On December 2, 2005, Plaintiff Richard Adams ("Adams") filed this action *pro se* in the Magistrate Court of DeKalb County, Georgia against Defendant IBM Corporation ("IBM") seeking interest of \$15,000 on a lump sum pension benefit he received from IBM's Personal Pension Plan ("The Plan").

On December 29, 2005, IBM removed the case to this court based on preemption under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C.S. § 502(a)(1)(B). After answering and obtaining salient documents, IBM deposed Adams on June 1, 2006. Discovery ended on June 6, 2006. Based on Adams' testimony, relevant plan documents and correspondence and the

Affidavit of the IBM Plan Administrator, Kenneth J. Morrissey, and the facts set forth in IBM's Statement of Undisputed Facts, IBM submits that summary judgment for IBM is appropriate on Adams' claim.

Summary judgment is appropriate because the Plan Administrator's denial of Adams' interest claim was neither arbitrary nor capricious. Specifically, the Plan Administrator declined interest for two reasons. First, Adams failed to timely elect and commence his lump sum Personal Pension Benefit after his retirement from IBM as required by the Plan. Second, the Plan does not allow for interest beyond age 65. Adams was 67 years old when he retired from IBM on May 31, 2003. Adams fails to introduce any evidence that suggests the decision had no reasonable factual basis. Moreover, he does not dispute any of the material facts. Accordingly, his claim should be dismissed.

II. ARGUMENT

A. **The arbitrary and capricious standard applies to the review of the denial of interest.**

Adams alleges an improper denial of benefits under a retirement plan in violation ERISA, 29 U.S.C.S. § 502 (a)(1)(B). In reviewing a denial of benefits claim under ERISA this Circuit first looks to the plan documents to determine if the claim's administrator has the discretion to interpret the terms in dispute. HCA Health Services of Ga., Inc., 240 F.3d 982, 992-93 (11th Cir. 2001). See also,

Slomcenski v. Citibank, N.A., 432 F.3d 1271, 1279-1280 (11th Cir. 2005) and Williams v. BellSouth Telecommunications., Inc., 373 F.3d 1132, 1137 (11th Cir. 2004). If the court finds the plan documents give the administrator discretion, the court applies the arbitrary and capricious review. HCA, 240 F.3d at 993). Finally, an administrator's determination must be upheld if the decision has a reasonable factual basis. Slomcenski, 432 F.3d at 1280.

The IBM Personal Pension Plan documents clearly give the Plan Administrator discretion in determining eligibility for interest on a lump sum benefit:

The powers of the Plan Administrator shall include, without limitation, the full authority and discretion: (a) to promulgate and enforce such rules and regulations as it shall deem necessary or appropriate for the administration of the Plan, (b) to incorporate changes required by law, (c) to interpret the Plan (including the review of claims pursuant to Article 7), consistent with the terms and intent thereof, and resolve any possible ambiguities, inconsistencies and omission, (d) to determine the appropriate retirement income and Survivor Benefits in accordance with the provisions of the Plan, and (e) to determine whether one form of income under the Plan is the Actuarial Equivalent of another form of income under the plan. All such determinations and interpretations shall be conclusive, provided it is in accordance with the requirements of ERISA and the Code. (IBM Personal Pension Plan, Jan. 1, 1995, at 23.)

Accordingly, the arbitrary and capricious standard of review applies to this court's review of the Plan Administrator's denial of interest on Adams' lump sum benefit.

B. Adams cannot show that the denial of interest on the lump sum distribution was arbitrary or capricious.

Adams' only claim in this case is for interest on his lump sum personal pension benefit from his separation in May, 2003 until his election in September, 2005. The Plan Administrator denied such interest for two reasons. First, Adams failed to timely elect his distribution when he retired in May, 2003. Second, the Plan does not allow for interest on a lump sum benefit after the participant reaches age 65.

Adams admits that when he retired he received a written estimate of his benefit options and instructions on how to elect through the Employee Services Center ("ESC"). He also admits that despite repeated requests from IBM he made a conscious decision not to elect his distribution when he retired. He chose to wait because he wanted to contest the PPA balance and he did not want to jeopardize his share of any settlement in the Cooper case.

Adams concedes the Plan requires him to elect and commence his benefit the first day of the month next following his separation. Plan Section 12(a). He testified he deliberately made no such election until years later.

Adams cannot dispute that the Plan does not pay interest on a lump sum benefit beyond the Plan's normal retirement age of 65. Summary Plan

Description Section 1.6.8.1. Accordingly, when he retired at age 67 he was not entitled to any additional interest regardless of when he elected benefits. Finally, he does not dispute that under the Plan the administrator can delay the distribution of benefits until a proper application has been made to the ESC.

Clearly based on this record Adams has conceded that the plan administrator's denial of interest was reasonable. See Slomcenski, supra (affirming summary judgment for the defendant on a denial of benefits claims under ERISA where Plan administrator decision was not unreasonable). See also Buckley v. Metropolitan Life, 115 F.3d 936, (Per Curiam 11th Cir 1997) (affirming summary judgment for defendant where the plan administrator's denial of benefits had a reasonable basis).

Here, there is no ambiguity in the Plan about eligibility for interest on a lump sum benefit or when a participant must elect such a benefit. The Plan Administrator's decision was not only reasonable but compelled by the clear language of the Plan documents.

Finally, the documents cited by Adams to support his claim either have no bearing on the interest issue or support the decision to deny interest. Neither the Memorandum in the Cooper decision nor the Notice under the IBM Retirement Savings Plan address the issue of the election of benefits requirements under the

Plan. Likewise, they do not address interest on a lump sum benefit under the Plan after age 65.

The April 18, 2005 Projection Statement Letter and Section 1.6.5 of the SPD both support the administrator's decision as they require a timely election of benefits and receipt of lump sum benefits by age 65. Accordingly, Adams has failed to come forward with any evidence suggesting the denial of interest was arbitrary or capricious and his claim should be dismissed.

III. CONCLUSION

For all of the above and foregoing reasons, Defendant IBM Corp. hereby requests this court to grant summary judgment in its entirety on behalf of Defendant IBM Corp.

Respectfully submitted this 17th day of July, 2006.

s/Stephen X. Munger, Esq.
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mungers@jacksonlewis.com

CERTIFICATION

I hereby certify that this document has been prepared in Book Antiqua font, 13 point, in compliance with LR 5.1C of this Court.

s/Stephen X. Munger, Esq.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RICHARD A. ADAMS,)
)
Plaintiff,)
)
v.) CIVIL ACTION FILE NO.
)
IBM CORP.)
)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2006 I electronically filed the **Memorandum in Support of Defendant's Motion for Summary Judgment** with the Clerk of Court using the CM/ECF system. I also hereby certify that I have mailed the foregoing document via United States Postal Service Certified Mail Return Receipt Requested to the following non-CM/ECF *pro se* plaintiff.

Richard A. Adams
2401 Winshire Drive
Decatur, GA 30035

s/Stephen X. Munger
Georgia Bar No. 529611
Attorneys for Defendant
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EXHIBIT C4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

AUG 02 2006

JAMES N. HATTEN, CLERK

By:

James N. Hatten

RICHARD A. ADAMS,)
Plaintiff,)
v.)
IBM CORP.)
Defendant.)

CIVIL ACTION FILE NO.
1:05-CV-3308-TWT

MEMORANDUM IN SUPPORT OF
PLAINTIFF - MOTION FOR SUMMARY JUDGMENT

In Chief G. Patrick Murphy's
Memorandum and Order (Plaintiff's Exhibit 1)
ON page 3 under B. The July 1, 1999 Amendment
When a participant's employment with IBM
ends, he may withdraw his account balance
as a lump sum, convert the account balance
into an immediate life annuity, or defer
the receipt of a lump sum payment or
a life annuity until a later date. While
a former employee is unable to earn
additional pay credits, he continues

to accumulate interest credits until
his PPA balance is withdrawn.

Civil Case No. 99-829-GPM is about
discrimination and age discrimination so
the Judge did not use the age of 65
to cut off the interest credits.

I did not retire until I was 67 years
and 8 month old. I was receiving interest
credits after age 65.

I asked on many occasions what were the
gains of the Personal Pension Plan from
May 31, 2003 to Dec. 31, 2003. And the gains
of the "Plan" from Jan. 1, 2005 to May 31, 2005.

I have not been given the numbers.
But I do have the numbers for 2004.

My Exhibit 2 shows under Summary
Annual Report of the IBM Per. Pen. Plan

That the "Plan" had \$4,184,842,410.⁰⁰
in ~~earning~~ from investments, which is
about 10% profit. My pension money
was in the account when this profit was
realized. I think it is fair that I should
get my fair share of the profit or the
percentage that I was charged on the
leveling money that I was required
to pay to the "PLAN".

In my Exhibit 3 which is page 21 from
About Your Benefits
Personal Pension Plan
Jan. 1, 2005
Doc. # USHR108

Under 1.6.5 Deferral of Payment.

It states that I may elect to put off to a future time or postpone or delay my payment. It says nothing about me having to give IBM a date that I want to receive my payment. It also says that my account balance will earn interest. I was not eligible to receive my pension on my 65th birthday as I was still employed by IBM.

In my Exhibit 4 I have a copy of my dates of retirement and serial numbers.

In my exhibit 5 I would like to challenge section '4'. I have never used Charles as an alias. There may be a Charles Adams employed by IBM but I am not Charles Adams.

I strongly agree with section 5. I did section 6-I elected to defer my distribution.

I feel that section 7 is very age discriminatory. While Mr. Morrissey may discriminate against someone because of age, I believe it's illegal for the plan to be bias to employee's over 65 years old.

Had I been 60 years old when I retired the 'Plan' says I would be eligible for interest credits. I do not think I should be discriminated against because of my age.

I think ERISA has age discrimination provisions to protect employees who have reached normal retirement age (age 65).

Conclusion

I have shown that the 'Plan' made money while my account was with them, therefore it will not cost the 'Plan' any money to pay me interest on the account. I have also shown that Judge G Patrick Murphy has ruled that the 'Plan' should pay interest to

employee's on the account after they leave IBM until they receive their money.

I know that ERISA has provisions to prevent the 'Plan' from discriminating against employees who have reached the age of 65 years old.

For all of the above reasons, I Richard A. Adams (Plaintiff) hope this court will grant summary judgment to the plaintiff.

Respectfully submitted Aug. 1, 2006

Richard A. Adams
2401 Winshire Dr.
Decatur GA 30035
770 981-6069

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

AUG 02 2006

JAMES N. HATTEN, CLERK
By: Deputy Clerk

RICHARD A. ADAMS,)
Plaintiff,)
v.) CIVIL ACTION FILE NO.
IBM CORP.) 1:05-CV-3308-TWT
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2006

I mailed a copy of Motion for Summary

Judgment to the Clerk of Court using

United States Postal Service Certified Mail

Return Receipt Requested and a copy of

said document to: Jackson Lewis, LLP

245 Peachtree Center Av NE

1900 Marquis One Tower

Atlanta, Ga. 30303-1226

Attn: Stephen X. Munger, Esq.

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